IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4595 of 2005

To

SPECIAL CIVIL APPLICATION No. 4606 of 2005

With

SPECIAL CIVIL APPLICATION No. 2117 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DINESHCHANDRA MANILAL RAVAL - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

Appearance :

MR. MUKUND M DESAI for Petitioner(s) : 1,
MR.L.B.DABHI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 3.
MR. D.P. VORA for Respondent(s) : 4,
MRS. V.D. NANAVATI for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 19/10/2005

ORAL JUDGMENT

These group of petitions are preferred to

challenge the action of non-payment of full gratuity amount to the petitioners. The petitioners were member of teaching staff of grants-in-aid colleges affiliated to the Universities, who have been paid Rs.2.5 Lacs as amount of gratuity, as against their claim of gratuity of Rs.3.5 Lacs, which is payable as per the revised Government Resolution.

2. The petitioners have made representation to the respondent authorities which has not been responded to. The case of the petitioners is that by virtue of resolution dated 20/1/1998, the amount of Death-Cum-Retirement Gratuity (D.C.R.G.) has been enhanced to Rs.3.5 Lacs, as against earlier limit of Rs.2.5 Lacs. The petitioners have retired after 20/1/1998, and therefore, benefit ought to have been given to them.

3. The respondents are served with notice of Rule. Respondents No.1 to 3 are represented by learned Asst. Government Pleader, Mr.L.B.Dabhi. Respondent No.4 is represented by Mr.D.P.Vora and Respondent No.5 – Gujarat University is represented by Learned Advocate Mrs.V.D.Nanavati.

4. Learned Advocate Mr.Chauhan, for and on behalf of Mr.M.M.Desai for the petitioner submitted that the case of the petitioners is covered by a decision of this Court, rendered in Special Civil Application No.9769 of 1993 on 27/8/2004 (Coram: M.R.Calla, J.) wherein it is observed that, "whether an employee is a pension holder or a member of contributory provident fund, he would stand on same footing and stands similarly situated so far as the benefits of D.C.R.G. is concerned.

4.1 Mr.Chauhan has relied upon a recent decision of this Court in case of ***Dr.Nalini N. Dave Vs. Government of Gujarat as reported in 2005 (3) G.L.R. 1844.***

4.2 Mr.Chauhan submitted that the petitioners, when they joined services, had to be a member of contributory provident fund compulsorily, as pension scheme was not even floated. He submitted that pension scheme is made applicable to colleges only around 1984-85 and that too only to the newly appointed employees. The petitioners had no option at all to opt for pension scheme, and as such no

fault can be found with the petitioners. Mr.Chauhan submitted that this submission is made by him only in anticipation of stand, that may be taken up by the other respondents. Except respondent No.4, the respondents have neither replied to the representation nor have they filed any affidavit in reply. He, therefore, submitted that the petitions may be allowed.

5. Learned Asst. Government Pleader, Mr.L.B.Dabhi, has opposed these petitions.

6. Learned Advocate Mr.Vora, for respondent No.4 and learned Advocate Ms.Vidhi Sodhen for Ms.V.D.Nanavati have submitted that appropriate legal orders may be passed.

7. The case of the petitioners on factual aspects about they being member of the teaching staff of grants-in-aid colleges affiliated to the Universities, is not in dispute. The fact that they have retired after 1998, is also not in dispute. The fact that the petitioners have been paid Rs.2.5 Lacs by way of D.C.R.G., is also not in

dispute. The only question arises for determination of this Court, is whether they can claim upper limit of D.C.R.G. of Rs.3.5 Lacs or not? It is contended on behalf of the petitioners and not controverted by the other side that if, gratuity is computed at 16 ½ months pay, each of the petitioner would be entitled to an amount exceeding Rs.3.5 Lacs. It is therefore contended further that they are all entitled to the upper limit of gratuity as fixed by Government Resolution of 20/1/1998 (Annexure – C). Since, respondents No.1 to 3 have not responded to the representation nor have they filed any affidavit in reply, this Court is at loss to know what has weighed with them in not considering the case of the petitioners and not paying them remaining amount of Rs.1 Lacs. In absence of any affidavit in reply controverting the case of the petitioners on affidavit, the same has to be accepted at its face value.

8. The question whether members of contributory provident fund can be differently treated as compared to members of the pension scheme, was considered by this Court, while deciding Special

Civil Application No.9769 of 1993 in order dated 27/8/2001 (Annexure – F) and after taking into consideration about six factors, the Court observed thus:-

> *"In the opinion of this Court, whether an employee is a pension holder or a member of contributor provident fund, he stands on the same footing and is similarly situated so far as the benefit of death cum retirement gratuity is concerned, and they cannot be treated differentially. Accordingly, this Court finds that the petitioners are entitled to the benefit of upper limit of gratuity of Rs.1 Lacs from 1/1/1986 and to that extent the Government Resolution dated 17/9/1991 and 19/1/1983 are found to be discriminatory in the context of the earlier Government Resolution dated 21/7/1987, which was taken with regard to the pension holders making an upper limit of gratuity as Rs.1 Lacs with effect from 1/1/1986."*

9. It would be relevant to note that the said limit of Rs.1 Lacs was enhanced by Resolution dated 10/1/1996 to Rs.2.5 Lacs with effect from 1/4/1995

and again at a later point of time by resolution dated 20/1/1998, limit was enhanced to Rs.3.5 Lacs and thus, the case of the petitioners is squarely covered by the aforesaid decision of a coordinate Bench of this Court. This Court has considered the reasonings and conclusions and finds no reason to take a different view.

10. In light of above situation, the petitions deserve to be allowed by directing the respondents to make payment of remaining amount of the gratuity. As the delay is caused in making payment, for which no fault can be found with the employees, the respondent authorities are liable to pay interest on the delayed payment at the rate not exceeding the rate notified by the Central Government.

11. Under the circumstances, petitions are allowed. Respondent authorities are directed to pay the remaining amount of gratuity to the petitioners with simple interest at the rate notified by the Government for repayment of long term deposits as envisaged under Sub-section 3 (A) of Section 7 of

the Payment of Gratuity Act, 1972, from the date of entitlement to the date of actual payment. Rule made absolute. There shall be no order as to costs.

(A.L.DAVE, J.)

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